

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations,)
(Healdsburg, California))

MM Docket No. 95-89

DOCKET FILE COPY ORIGINAL

To: Chief, Allocations Branch

REPLY COMMENTS OF PHIL SQUYRES

Phil Squyres ("Petitioner"), by his attorneys, hereby submits these reply comments in support of the Commission's proposal in the above-referenced matter to amend Section 73.202(b), the FM Table of Allotments, to allot Channel 244A to Healdsburg, California.

In his comments, Petitioner demonstrated that the allotment of Channel 244A to Healdsburg, California, would serve the public interest, convenience and necessity. In addition, Petitioner reiterated his intention to apply for Channel 244A in the event that it is allotted to Healdsburg, California, and, if his application is granted, to construct and operate the proposed facilities.

No counterproposals or other comments were timely filed in this proceeding. Comments of Mr. Kenneth C. Kushnir were served on Petitioner after the comment period had closed and may have been filed with the Commission, also after the comment period had closed (see below).¹ In his comments, Mr. Kushnir requested that the Commission assign Channel 244A to Boonville, California. For a variety of reasons, the comments of Mr. Kushnir do not constitute a legitimate counter-proposal and they should not be considered by the Commission.

¹ The certificate of service attached to Mr. Kushnir's comments indicates that the comments were sent via Federal express on August 9, 1995. However, the Federal Express envelope in which the comments were sent has the date crossed out and "August 14, 1995" written in by hand. The comments arrived at Petitioner's former counsel's office on August 15, 1995.

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To begin with, Mr. Kushnir's comments were untimely. The Notice of Proposed Rulemaking in this proceeding indicated that comments were due by August 10, 1995. See Amendment of Section 73.202(b) (Healdsburg, California), Notice of Proposed Rulemaking, MM Docket No. 95-89 (rel. June 19, 1995). Mr. Kushnir's comments, if received by the Commission at all, were not received until after August 10, 1995. As of August 24, 1995, Mr. Kushnir's comments have not appeared on the Commission's "RIPS" system in the public reference room. Section 1.420(d) of the Commission's Rules clearly states that counterproposals must be made in initial comments. Putative counterproposals filed after the comment period has closed are untimely and will not be considered. See Frederiksted, Virgin Islands, Report and Order, MM Docket No. 92-245 (rel. July 25, 1995); Ashland, California, Rolla and Monroe City, Missouri, 9 FCC Rcd 2306 (1994). Accordingly, Mr. Kushnir's comments do not constitute a valid counterproposal.

Second, Mr. Kushnir's comments fail to express any intention to apply for Channel 244A if it were allotted to Boonville, California, as he requested. Comments that do not contain such an expression do not qualify as counterproposals and need not be considered. See Fairmont, North Carolina, Andrews, Charleston, Elloree, Estill, Little River, and Sullivan's Island, South Carolina, 6 FCC Rcd 4285 n.4 (1991).

Finally, Mr. Kushnir's comments fail to include an affidavit verifying that the statements contained in it are accurate to the best of Mr. Kushnir's knowledge. Section 1.52 of the Commission's Rules requires that any document filed by a party not represented by counsel shall be signed and verified by the party. In addition, Section 1.402(b) of the Commission's Rules concerning rulemaking proceedings indicates that pleadings must conform with the requirements of Section 1.52 regarding verification. Thus, comments filed by an unrepresented party that lack such verification are procedurally defective and should be dismissed. See Latta, Marion, Camden and Blythewood, South Carolina, Report and Order, MM Docket No. 93-47 at n.3 (rel. June 29, 1995). Since Mr. Kushnir's *pro se* pleading is not properly verified, it should be dismissed.

In sum, Mr. Kushnir's comments are substantively and procedurally defective. On several occasions the Commission has noted that counterproposals must be technically and procedurally correct or they will not be considered. See, e.g., Hattiesburg, Mississippi, 7 FCC Rcd 7602 (1992); Broken Arrow and Bixby, Mississippi

and Coffeerville, Kansas, 3 FCC Rcd 6507 (1988), recon. denied, 4 FCC Rcd 6981 (1989). Because of the numerous failings of Mr. Kushnir's comments, those comments do not constitute a valid counterproposal and they should not be considered by the Commission.

Based on all of the foregoing, Petitioner maintains that Channel 244A should be allotted to Healdsburg, California.

Respectfully submitted,

Phil Squyres

By:



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August 25, 1995

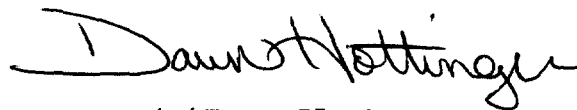
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments of Phil Squyres was sent by first-class mail, postage prepaid, this 25th day of August, 1995, to each of the following:

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/s/ Dawn Hottinger
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* By Hand